

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

TABATABAEI, Mohammad
A 75 312 124

Plaintiff,

v.

Michael CHERTOFF, Secretary of U.S.
Department of Homeland Security; Michael
MUKASEY, U.S. Attorney General; Emilio T.
GONZALEZ, Director, U.S. Citizenship &
Immigration Services; Ruth DORCHOFF, District
Director, U.S. Citizenship & Immigration Services,
Chicago Field Office; F. Gerard, HEINAUER,
Acting Director, Nebraska Service Center; and
Robert S. MUELLER, III, Director of the Federal
Bureau of Investigation,

Defendants.

NO. 08 C 1356

Judge Gettleman

**AMENDED PETITION FOR HEARING ON NATURALIZATION
APPLICATION**

NOW COMES the Petitioner, Mohammad Tabatabaei, by and through his attorney, Stanley J. Horn of Horn, Khalaf, Abuzir, Mitchell & Schmidt, and Petitions this Honorable Court pursuant to Immigration & Nationality Act (“INA”) § 336(b) and 8 U.S.C. § 1447(b), request the Defendants to hold a hearing on this Naturalization Application, and in support thereof, states as follows:

STATEMENT OF ACTION

1. This petition is brought to compel action on an Application for Naturalization (“N-

400”) under Section 334 of the Immigration and Nationality Act properly filed with the United States Citizenship and Immigration Services (“USCIS”) by the Plaintiff. To the Plaintiff’s detriment, Defendants have failed to adjudicate the application.

JURISDICTION AND VENUE

2. This court has original jurisdiction to hear both civil actions arising under the laws of the United States and actions to compel an officer or employee of the United States or any agency thereof to perform a duty. 28 U.S.C. § 1331; 28 U.S.C. § 1361. This court also has jurisdiction to grant declaratory relief pursuant to 28 U.S.C. §§ 2201-2202.

3. This action is brought to compel the Defendants, officers and an agency of the United States, to perform the duties arising under the laws of the United States. This Court has jurisdiction to hear actions arising from claims that an agency or officer or employee of a government agency failed to act in its or his or her official capacity and the person to whom the duty was owed suffered a legal wrong. 5 U.S.C. § 702.

4. This action invokes the Plaintiff’s right of due process under the Fifth Amendment of the United States Constitution, over which this Court retains jurisdiction. This action is also brought due to the failure of the Defendants to perform their duty to adjudicate the Plaintiff’s N-400 Application for Naturalization under Section 334 of the INA within 120 days after the examination on the Application is considered. Failure to adjudicate said Application has resulted in harm to the Plaintiff.

5. Venue is proper in the Northern District of Illinois because Plaintiff resides in the Northern District of Illinois and a substantial part of the activities complained of occurred in the Eastern District of Wisconsin. See 8 U.S.C. § 1391(e).

PARTIES

6. Plaintiff, Mohammad Tabatabaei, who has been a Lawful Permanent Resident for more than five (5) years. He has continuously resided in the United States and has satisfied the residency requirements for Naturalization, has been a person of good moral character and has demonstrated knowledge of the English language, U.S. government and history as required by INA § 316, 8 U.S.C. § 1427.

7. Defendant Michael Chertoff ("Chertoff"), the Secretary for the Department of Homeland Security ("DHS"), is being sued in his official capacity only. Pursuant to the Homeland Security Act of 2002, Pub. L. 107-296, Defendant Chertoff, through his delegates has authority to adjudicate Naturalization Applications filed with the United States Citizenship and Immigration Services (USCIS) to accord applicants citizenship under the provisions of Section 335 of the INA, 8 U.S.C. § 1446.

8. Defendant Michael Mukasey ("Mukasey"), the Acting Attorney General of the United States, is being sued in his official capacity only. Mukasey is authorized to promulgate regulations governing the implementation and administration of the Immigration and Nationality Act pertaining to the naturalization of legal resident aliens and other qualified aliens.

9. Defendant Emilio T. Gonzales, the Director of the United States Citizenship and Immigration Services, is being sued in his official capacity only. His Under Secretary position within the Department of Homeland Security charges him with supervisory authority over federal and contract employees who are responsible for the processing of immigration benefits.

10. Defendant Ruth Dorchoff ("Dorchoff"), the Officer-in-Charge of the USCIS Chicago Field Office, is being sued in her official capacity only. Dorchoff is in charge with supervisory

authority over all of Chicago USCIS operations and USCIS agents and officers acting in their official capacity.

11. Defendant F. Gerard Heinauer ("Heinauer"), the Acting Director of the USCIS Nebraska Service Center, is being sued in his official capacity only. Heinauer is charged with supervisory authority over all of the Nebraska USCIS operations where Plaintiff's application is currently pending.

12. Defendant Robert S. Mueller III ("Mueller"), Director of the Federal Bureau of Investigation ("FBI"), is being sued in his official capacity only. Mueller has authority over the FBI's actions and the actions of its agents and officers. The FBI is statutorily obligated to conduct security checks on all Applications for Naturalization.

CAUSE OF ACTION

13. Plaintiff filed Form N-400, Application for Naturalization in June 24, 2006 with the USCIS pursuant to Section 334 of the Immigration Act of 1990, Pub. L. No. 101-649, 104 Stat. 4978, 8 U.S.C. § 1445.

14. Plaintiff followed the appropriate procedures for the Naturalization process, including having fingerprints taken in accordance with the procedures set up by the Defendants.

15. On August 2, 2006, Plaintiff filed an application for naturalization, in over two years the Plaintiff has never been scheduled for an interview.

16. That there has not yet been a decision on Petitioner's N-400 Application, despite the fact that it has been pending since June of 2006 and despite numerous inquiries with CIS.

17. The Plaintiff's wife is presently in removal proceedings and the Immigration Court has agreed to continue her case for a limited period of time, pending a determination of the Plaintiff's petition for naturalization.

18. That the Defendants' failure to adjudicate the Plaintiff's application for naturalization has placed the Plaintiff's wife in jeopardy of being ordered removed from the United States.

PRAYER

WHEREFORE, Plaintiff prays that this Court grant him the following relief:

- A. Assume jurisdiction over the case and naturalize him;
- B. Grant him citizenship pursuant to his application for naturalization, or, alternatively, order Defendants to adjudicate his application within 60 days;
- C. Award Plaintiff reasonable attorney's fees pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412, for failure of the Defendants to perform their duties within the statutory time period; and
- D. Such other relief at law and in equity as justice may so require.

Respectfully submitted,
MOHAMMAD TABATABAEI

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NOTICE OF FILING

TO: U.S. Attorney's Office
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219 S. Dearborn Street, 5th Floor
Chicago, IL 60604
Via First Class Mail

Michael Mukaey
U.S. Attorney General
950 Pennsylvania Avenue, N.W.
Washington, DC 20530
Via First Class Mail

Robert S. Mueller, III
Federal Bureau of Investigation
935 Pennsylvania Ave., N.W.
Washington, DC 20535-0001
Via First Class Mail

Michael Chertoff
Office of General Counsel
U.S. Department of Homeland Security
Washington, DC 20528
Via First Class Mail

Ruth Dorchoff
District Director, USCIS Chicago Field Office
101 W. Congress Parkway
Chicago, IL 60605
Via First Class Mail

F. Gerard Heinauer
Nebraska Service Center
P.O. Box 87400
Lincoln, NE 68501-7400
Via First Class Mail

PLEASE TAKE NOTICE that on March 25, 2008, Plaintiff filed with the District Court for the Northern District of Illinois, his Amended Petition for Hearing on Naturalization Application, a copy of which is hereby served upon you as indicated above.

s/Stanley J. Horn
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CERTIFICATE OF SERVICE

The undersigned attorney certifies that he caused this Notice to be served upon the above addressed by mail service or hand delivery by 5:00 p.m. on March 25, 2008.

s/Stanley J. Horn

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